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PATENT APPLICATION

ATTORNEY DOCKET NO. 200300433-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Ward S. Foster et al

Confirmation No.: 4588

Application No.: 10/777,372

Examiner: Rudolph, Vincent M.

Filing Date: Feb. 12, 2004

Group Art Unit: 2625

Title: PROVIDING A SUBSTITUTE PRINTER DRIVER

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on June 2, 2009.

☒ The fee for filing this Appeal Brief is \$540.00 (37 CFR 41.20).

☐ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month
\$130

☐ 2nd Month
\$490

☐ 3rd Month
\$1110

☐ 4th Month
\$1730

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 540. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Respectfully submitted,

Ward S. Foster et al

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INVENTOR(S): Ward S. Foster

SERIAL NO.: 10/777,372

GROUP ART UNIT: 2625

FILED: 2/12/2004

EXAMINER: Rudolph, Vincent M.

SUBJECT: PROVIDING A SUBSTITUTE PRINTER DRIVER

THE COMMISSIONER OF PATENTS
ALEXANDRIA, VA 22313-1450

APPELLANTS'/APPLICANTS' OPENING BRIEF ON APPEAL

1. REAL PARTY IN INTEREST.

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holding, LLC.

2. RELATED APPEALS AND INTERFERENCES.

There are no other appeals or interferences known to Appellants, Appellants' legal representative or the Assignee which will affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS.

Claims 1-5, 7-9, 12, 17-18, 25-27 are pending but stand rejected. Claims 6, 10, 11, 13-16, 19-24, and 28-34 have been cancelled. All pending claims are appealed.

4. STATUS OF AMENDMENTS.

No amendments have been filed after the final action was entered. All previous amendments have been entered.

5. SUMMARY OF CLAIMED SUBJECT MATTER.

Claim 1 recites a system that includes a server configured to be coupled in data communication with a network. The server is configured to maintain a database. See, e.g., Specification, page 3, lines 1-17, page 5, lines 1-11, Fig. 1, elements 122 and 126. The database includes a plurality of data records. See, e.g., Specification, page 5, line 27 through page 6, line 6, Fig. 2, elements 200 and 202. Each of the plurality of data records includes:

- a printer type identification (see, e.g., Specification, page 6, lines 7-15, Fig. 2, elements 202 and 204),
- a plurality of substitute printer driver identifications associated with the printer type identification (see, e.g., Specification, page 6, lines 7-15, Fig. 2, elements 202 and 206); and
- a compatibility rating associated with each substitute printer driver identifications (see, e.g., Specification, page 6, lines 16-34, Fig. 2, elements 202 and 208).

The server is configured to communicate one of the plurality of data records via the network and receive a response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record. See, e.g.,

Specification, page 12, lines 1-33. The server is also configured to cause a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification. See, e.g., Specification, page 12, lines 1-33.

Claim 17 recites a method that includes maintaining a database having a plurality of data records. Each of the plurality of data records includes:

- a printer type identification (see, e.g., Specification, page 6, lines 7-15, Fig. 2, elements 202 and 204);
- a plurality of substitute printer driver identifications associated with the printer type identification (see, e.g., Specification, page 6, lines 7-15, Fig. 2, elements 202 and 206); and
- a compatibility rating associated with each substitute printer driver identifications (see, e.g., Specification, page 6, lines 16-34, Fig. 2, elements 202 and 208).

The method includes communicating one of the plurality of data records and receiving a response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record. See, e.g., Specification, page 12, lines 1-33. The method also includes causing a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification. See, e.g., Specification, page 12, lines 1-33.

Claim 25 recites an apparatus that includes a computer-readable storage media including an executable program code. The executable program code is configured to cause a processor of a server to implement a method. That method includes maintain a database having a plurality of data records. Each of the plurality of data records includes:

- a printer type identification (see, e.g., Specification, page 6, lines 7-15,

Fig. 2, elements 202 and 204);

- a plurality of substitute printer driver identifications associated with the printer type identification (see, e.g., Specification, page 6, lines 7-15, Fig. 2, elements 202 and 206); and
- a compatibility rating associated with each substitute printer driver identifications (see, e.g., Specification, page 6, lines 16-34, Fig. 2, elements 202 and 208).

The method includes communicating one of the plurality of data records and receiving a response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record. See, e.g., Specification, page 12, lines 1-33. The method also includes causing a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification. See, e.g., Specification, page 12, lines 1-33.

Claim 27 recites a system comprising various means for performing various tasks. Includes are means for maintaining a database having a plurality of data records. See, e.g., Specification, page 3, lines 1-17, page 5, lines 1-11, Fig. 1, elements 122 and 126. Each of the plurality of data records includes:

- a printer type identification (see, e.g., Specification, page 6, lines 7-15, Fig. 2, elements 202 and 204);
- a plurality of substitute printer driver identifications associated with the printer type identification (see, e.g., Specification, page 6, lines 7-15, Fig. 2, elements 202 and 206); and
- a compatibility rating associated with each substitute printer driver identifications (see, e.g., Specification, page 6, lines 16-34, Fig. 2, elements 202 and 208).

Included are means for communicating one of the plurality of data records and receiving a response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record. See, e.g., Specification, page

12, lines 1-33 and Fig. 1 element 126. Also included are means for causing a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification. See, e.g., Specification, page 12, lines 1-33 and Fig. 1 element 126.

6. GROUNDS FOR REJECTION TO BE REVIEWED.

A. Claims 1-5, 7-9, 17-18, and 25-27 stand rejected as being anticipated by US Pub 2003/0065755 to Gunji.

B. Claim 12 stands rejected under 35 USC §103 as being obvious over Gunji.

7. ARGUMENT.

A. Ground For Rejection A – Claims 1-5, 7-9, 17-18, and 25-27 stand rejected as being anticipated by US Pub 2003/0065755 to Gunji.

To support a §102 rejection for anticipation, the Examiner must construe the claims such that they are given their broadest reasonable interpretation consistent with the specification as it would be interpreted by one of ordinary skill in the art. MPEP §2111. Thus, the Examiner's interpretation of the claims must take into account the specification as it would be reasonably interpreted by one of ordinary skill in the art. The Examiner must also compare the construed claims to a prior art reference and make factual findings that each and every limitation is found either expressly or inherently in that single prior art reference. *In re Crish*, 393 F.3d 1253, 1256, 73 U.S.P.Q.2d 1364, 1366-67 (Fed.Cir.2004). Moreover, because the hallmark of anticipation is prior invention, the prior art reference must not only disclose all elements

of the claim within the four corners of the document, but must also disclose those elements arranged as in the claim. See *Net MoneyIn, Inc. v. Verisign, Inc.*, Case 2007-1565 (Fed. Cir. 2008).

Claim 1 is directed to a system that, as amended, includes a server. That server is configured to:

1. maintain a database having a plurality of data records, each of the plurality of data records including a printer type identification, a plurality of substitute printer driver identifications associated with the printer type identification, and a compatibility rating associated with each substitute printer driver identifications;
2. communicate one of the plurality of data records via the network and receive a response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record; and
3. cause a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification.

In a response filed April 9, 2009 to the final office action, the Appellant explained that Gunji fails to teach or suggest a server that is configured to maintain database having a plurality of data records where each records includes each of:

- a printer type identification,
- a plurality of substitute printer driver identifications associated with the printer type identification, and
- a compatibility rating associated with each substitute printer driver identifications.

Fig. 2, of the present application, is reproduced below and depicts an exemplary plurality of data records 202 consistent with Claim 1.

200

MOBILE ENTERPRISE PRINTING DRIVERS			
208			
204 ↓ PRINTER	206 ↓ SUB. DRIVER(S)	210 ↓ RATING (STAR)	212 ↓ RATING (%)
202, 220 {	TYPE 1	TYPE 2	☆☆☆☆ 91%
		TYPE 4	☆☆ 66%
		TYPE 7	☆ 21%
202 {	ACME 123	ACME ABC	☆☆☆ 85%
		ACME ZZZ	☆☆☆ 77%
		ACME XYZ	☆☆ 56%
		...	
202 {	PRINTY AA	PR-BB	☆☆☆☆ 99%

A given data record includes a printer type identification 204, a plurality of substitute printer driver identifications 206, and compatibility rating 208 for each of the substitute printer identifications 206. Substitute printer driver identifications are addressed in the Specification at page 5, line 32 through page 6, line 26. As described each of the each of the plurality of substitute printer driver identifications 206 of a given data record 202 are associated with the printer type identification 204 of that record 202. See Specification , page 6, lines 11-12. Each substitute printer driver identification 206 of a given record 202 is associated with a compatibility rating or ratings 208. See Specification , page 6, lines 16-17. According to the specification, each compatibility rating 208 is intended to "indicate some measure of suitability or overall qualitative performance when using a substitute printer driver identified by the substitute printer driver identification 206 associated with the given compatibility rating 208. See Specification , page 6, lines 19-26.

Addressing Claim 1 at page 2 of the final office action, the Examiner maps the elements of Claim 1 to Gunji as follows:

<i>Recited Element of Claim 1</i>	<i>Mapping to Gunji</i>
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maintain a database having	Driver database(22); Gunji Fig. 2; paragraphs [0054], [0057]
a plurality of data records – each data record containing	Gunji, Fig. 1 and paragraph [0049] (equating printer drivers stored in drivers database 22)
a printer type identification	PRT1 and PRT2, Gunji, Fig. 1, paragraph [0049].
<i>“one or more substitute printer type identifications associated with the printer type identification”</i> <u>(mischaracterization of Claim 1 which requires a “plurality” of substitute printer driver identifications associated with the printer type identification).</u>	Gunji, paragraph [0051] (an updated version of the printer driver if available . . . depending on the user information such as the operating system and version as discussed in paragraph [0004])
and a compatibility rating associated with each substitute printer type identification.	Gunji, paragraph [0004] (the driver that is most compatible for the user is dependent upon the selected printer and the user's operating system).

Addressing the cited reference, the Examiner equates Gunji's driver database (22) with the database of Claim 1 that is maintained by the recited server. Gunji mentions its driver database (22) in paragraphs [0054] and [0057] and nowhere else. At best the driver database (22) includes printer drivers for printers identified as PRT1 and PRT2 in Fig. 1. Thus to establish a prima facie case for obviousness, the Examiner ***must at least*** assert that each such printer driver in database 22 includes:

- a printer type identification,
- a plurality of substitute printer driver identifications associated with the printer type identification, and
- a compatibility rating associated with each substitute printer driver identifications

The Examiner fails to do so. Instead, the Examiner unreasonably pieces together various passages from Gunji without providing any rationale as to how those passages disclose the elements of Claim 1 as arranged.

The Examiner cites Gunji's paragraph [0004] asserting that Gunji teaches the compatibility rating recited in Claim 1. Gunji's paragraph [0004] is reproduced as follows:

[0004] There are a number of printer driver programs according to the type of the printer, the operating system, the language, and the version. It is thus required for the user to select an appropriate printer driver for installation. In many cases, the printer driver program of a later version than the version of the program stored in a medium packed with the printer main body is provided in a predetermined Web site on the Internet. It is thus desirable to fetch the update information of the printer driver and acquire the printer driver of the up-to-date version. There is, however, difficulty for the general users in adequately installing the printer driver by taking into account such situations. In the network connecting with a large number of clients, a specific manager stores an optimum printer driver in the management system. The user downloads and installs the printer driver stored in the management system.

This cited passage is taken from Gunji's background section and does not even remotely suggest that a printer driver include a compatibility rating as reasonably understood by a person of ordinary skill in the art in view of the Specification. Nothing in this passage can be reasonably construed to infer that the printer driver for Gunji's PRT1 or PRT2 includes a compatibility rating associated with each of the plurality of substitute printer driver identifications included in that printer driver. In fact, paragraph [0004] neither mentions nor infers including any type of compatibility rating data whatsoever in a printer driver file stored in Gunji's driver database (22).

Furthermore, Gunji mentions absolutely nothing of a plurality of substitute printer driver identifications associated with the printer type identification and a compatibility rating associated with each of the plurality of substitute printer driver identifications. The Examiner cites Gunji's paragraph [0051] asserting that Gunji teaches the plurality of substitute printer driver identifications recited in Claim 1. Gunji's paragraph [0051] is reproduced as follows:

[0051] The printer drivers are provided by the manufacturers of the respective printers PRT 1 and PRT 2 and are generally subjected to iterative version-up. The version-up printer driver is supplied via the Internet by the Web server 100. The management system 10 regularly monitors the Web server 100 and fetches and holds the printer driver of the latest version. As discussed later, information for supporting fetch of the printer driver by the management system 10 is stored in the Web server 100. The management system 10 corresponds to the information collection system of the present invention. The Web server 100 corresponds to the support system of the present invention.

Contrary to the Examiner's position, paragraph [0051] cannot be reasonably construed to infer that the printer driver for PRT1 or PRT2 includes a plurality of substitute printer driver identifications associated with the printer type identification of PRT1 or PRT2. In fact, paragraph [0051] neither mentions nor infers including any type of substitute printer type identifier in a printer driver file stored in Gunji's driver database (22).

The Examiner has failed to assert let alone establish that Gunji discloses all elements of Claim 1 as those elements are arranged the claim. Thus, the Examiner has failed to establish a prima facie case of anticipation under §102. For at least this reason, Claim 1 is patentable over Gunji as are Claims 2-5, 7-9, and 12 which depend from Claim 1.

Claim 17 is directed method implementation of Claim 1. For at least the same reasons Claim 1 is patentable over Gunji, so are Claim 17 and Claim 18 which depends from Claim 17.

Claim 25 is directed to an apparatus implementation of the system of Claim 1. For at least the same reasons Claim 1 is patentable over Gunji, so are Claim 25 and Claim 26 which depends from Claim 25.

Claim 27 is directed to a system that includes various means for implementing the method of Claim 17. Thus, for at least the same reasons Claims 1 and 17 are patentable over Gunji, so is Claim 27.

B. Ground For Rejection B – Claim 12 stands rejected under 35 USC §103 as being obvious over Gunji.

Claim 12 depends from Claim 1 and is patentable based at least in part on that dependency.

Conclusion: the appellant respectfully requests that the Board reverse all outstanding objections and that this application and all presently pending claims be allowed to issue.

Respectfully submitted,
Ward S. Foster

By /Jack H. McKinney/
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July 30, 2009
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APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

1. (previously presented) A system, comprising:

a server configured to be coupled in data communication with a network, the server being configured to:

maintain a database having a plurality of data records, each of the plurality of data records including a printer type identification, a plurality of substitute printer driver identifications associated with the printer type identification, and a compatibility rating associated with each substitute printer driver identifications;

communicate one of the plurality of data records via the network and receive a response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record; and

cause a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification.

2. (previously presented) The system of claim 1, and further comprising a printer configured to be coupled in data communication with the network, the printer defining a printer type substantially equivalent to the printer type identification of at least one of the plurality of data records.

3. (previously presented) The system of claim 1, wherein the server includes, for each substitute printer driver identification, a printer driver identified by that substitute printer driver identification.

4. (original) The system of claim 1, and wherein the server is defined by a mobile enterprise printing server.

5. (previously presented) The system of claim 1, and further comprising a user computer configured to be coupled in data communication with the network, the user

computer configured to:

receive a data record communicated by the server; and

communicate a response to the server, the response identifying a selected one of the plurality of substitute printer driver identifications included in the received data record.

6. (cancelled)

7. (previously presented) The system of claim 1, and wherein the server is further configured to:

receive an update command; and

download one or more data records available from an internet website; and

amend the database in accordance with the one or more downloaded data records.

8. (previously presented) The system of claim 7, and wherein the server is configured to amend by adding at least one of the one or more downloaded data records to the database.

9. (previously presented) The system of claim 7, and wherein the server is configured to download the one or more data records in accordance with a comparison between the data records available from the Internet website and the database.

10. (cancelled)

11. (cancelled).

12. (previously presented) The system of claim 1, and wherein at least one of the one or more compatibility ratings is defined by one of a star rating and a percentage rating.

13. (cancelled)

14. (cancelled)

15. (cancelled).

16. (cancelled)

17. (previously presented) A method, comprising:

maintaining a database having a plurality of data records, each of the plurality of data records including a printer type identification, a plurality of substitute printer driver identifications associated with the printer type identification, and a compatibility rating associated with each substitute printer driver identifications;

communicating one of the plurality of data records and receiving a response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record; and

causing a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification.

18. (previously presented) The method of claim 17, further comprising:

causing the printer of the particular type to image the print ready data file on sheet media.

19. (cancelled)

20. (cancelled)

21. (cancelled)

22. (cancelled)

23. (cancelled)

24. (cancelled)

25. (previously presented) An apparatus, comprising:

a computer-readable storage media including an executable program code, the executable program code configured to cause a processor of a server to selectively:

maintain a database having a plurality of data records, each of the plurality of data records including a printer type identification, a plurality of substitute printer driver identifications associated with the printer type identification, and a compatibility rating associated with each substitute printer driver identifications;

communicate one of the plurality of data records and receive a response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record; and

cause a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification.

26. (previously presented) The apparatus of claim 25, and wherein the executable program code is further configured to cause the processor of the server to selectively amend at least one data record of the database using one or more downloaded data records.

27. (previously presented) A system, comprising:

means for maintaining a database having a plurality of data records, each of the plurality of data records including a printer type identification, a plurality of substitute printer driver identifications associated with the printer type identification, and a compatibility rating associated with each substitute printer driver identifications;

means for communicating one of the plurality of data records and receiving a

response identifying a selected one of the plurality of substitute printer driver identifications included in the communicated data record; and

means for causing a printer driver identified by the selected substitute printer driver identification to derive print ready data file for future print requests directed to a printer of the particular type identified by the printer type identification that is associated with the selected substitute printer driver identification.

28. (cancelled)

29. (cancelled)

30. (cancelled)

31. (cancelled)

32 (cancelled)

33 (cancelled)

34. (cancelled)

Evidence Appendix

There is no extrinsic evidence to be considered in this Appeal. Therefore, no evidence is presented in this Appendix.

Related Proceedings Appendix

There are no related proceedings to be considered in this Appeal. Therefore, no such proceedings are identified in this Appendix.